

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

AGORA CYBER CHARTER SCHOOL

Employer

and

Case 04-RC-179402

AGORA CYBER PROFESSIONALS
ASSOCIATION, PSEA/NEA

Petitioner

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

The sole issue raised by this case is one upon which I have already ruled in a prior case involving the same employer: whether the Employer, Agora Cyber Charter School, is exempt from the Board's jurisdiction as a political subdivision pursuant to the Supreme Court's decision in *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971). In this case, the Petitioner, Agora Cyber Professionals Association, PSEA/NEA, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of professional employees employed by the Employer. In Case 04-RC-170767, I issued a Decision and Direction of Election on April 5, 2016 in which I concluded that the Employer is not exempt from the Board's jurisdiction pursuant to the *Hawkins County* test. Because the parties have stipulated that the facts underlying their jurisdiction arguments in this case are identical to those I considered in my prior decision, and they raise no new legal arguments, I again find that the Employer is not exempt from the Board's jurisdiction.

A hearing was held before a Hearing Officer of the National Labor Relations Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Based upon the entire record in this matter and for the reasons set forth below, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner is a labor organization that claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The parties stipulated, and I find, that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time Family Coaches, Strong Start Coaches (Orientation Advisors), Intervention Specialists, School Psychologists, Student Transition Coordinators, Family Assistance Crisis Counselors, Social Workers And Speech Pathologists employed by the Employer at the Agora Charter Cyber School, **excluding** all other employees, including Nurses, Guidance Counselors, K-12 General and Special Education Teachers, K-12 Specialists, K-12 Biology, Math Teacher, Reading Specialists, Special Education Instruction Support Employees, guards, and supervisors, as defined in the Act.

The parties entered into multiple stipulations in lieu of presenting evidence on the issue of jurisdiction. In a joint stipulation of facts received into evidence as Joint Exhibit 1, the parties stipulated to the following:

- 1) The parties' respective positions on jurisdiction in this case are the same as those taken in Case 04-RC-170767, as reflected in the transcript of hearing in that case.
- 2) The Employer's operations and organizational structure are identical to the operations described in Case 04-RC-170767.
- 3) The record in this case will include, along with the joint stipulation of facts contained in Joint Exhibit 1, the transcripts (including Statement of Position and Exhibits), briefs, and Employer's request for review in Case 04-RC-170767.

Because I have already ruled on the question of whether the Board has jurisdiction over the Employer in Case 04-RC-170767, and in light of the parties' stipulation that all relevant facts and arguments concerning their respective positions are contained in the record in Case 04-RC-170767, I again conclude, in agreement with Petitioner, that the Employer is not exempt from the Board's jurisdiction pursuant to the *Hawkins County* test. In support of that conclusion, I have attached hereto a copy of my Decision and Direction of Election in Case 04-RC-170767, and I

hereby incorporate by reference all of my findings of fact and conclusions of law in that Decision concerning the issue of the Board's jurisdiction over the Employer.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret mail-ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **Agora Cyber Professionals Association, PSEA/NEA**.

A. Election Details

The ballots will be mailed on **Friday, August 5, 2016** to employees employed in the appropriate collective-bargaining unit. Ballots will be mailed to voters from the National Labor Relations Board, Region 4, 615 Chestnut Street, Philadelphia, PA 19106. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void. Voters must return their mail ballots to the Region 4 office by close of business on **Friday, August 26, 2016**.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **August 12, 2016** should communicate immediately with the National Labor Relations Board by either calling the Region 4 Office at 215-597-7647 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

All ballots will be commingled and counted at the Region 4 Office at 615 Chestnut Street, Philadelphia, Pennsylvania on **Monday, August 29, 2016 at 2:00 p.m.** In order to be valid and counted, the returned ballots must be received in the Region 4 Office prior to the counting of the ballots.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **July 15, 2016**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3)

employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **August 1, 2016**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found

appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: July 28, 2016

HAROLD A. MAIER¹

Acting Regional Director, Region 04
National Labor Relations Board
615 Chestnut Street, Suite 710
Philadelphia, PA 19106-4413

¹ Regional Director Dennis P. Walsh is recused from this matter.